No. 06-5754

FILED
JAN 5 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

# Supreme Court of the United States

VICTOR A. RITA, JR.,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## SUPPLEMENTAL VOLUME TO THE JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED JULY 28, 2006**
**CERTIORARI GRANTED NOVEMBER 3, 2006**

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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3:04CR105
NOVEMBER 8 & 9, 2004

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UNITED STATES OF AMERICA,
*Plaintiff,*

vs.

VICTOR A. RITA, JR.,
*Defendant.*

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TRANSCRIPT OF TRIAL TESTIMONY AND JURY INSTRUCTIONS BEFORE THE HONORABLE WILLIAM L. OSTEEN UNITED STATES DISTRICT JUDGE

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APPEARANCES:

| | |
|---|---|
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* * * *

[17] A In April—in late April, after the recall had been initiated, a local resident down in Charleston, close by where my field office is, was interviewed by me after we had

recovered a PPSh-41. And that person relayed a story that he had called Interordnance and they had told him, "Don't give that evidence to ATF. It's not your job to do that." And that was basically the information I was getting from that witness. But we were not able to determine exactly who that witness was talking to or talking about from the company, so we felt Mr. Rita would be able to provide further detail on that, for that aspect of investigation.

Q What was the name of individual you talked to in Charleston who provided you that information?

A His name is David Lawson.

Q Had you talked to David Lawson at the time that a decision was made to call Mr. Rita to the grand jury?

A I spoke with Mr. Lawson prior to that. It was—April 25 is when I interviewed Mr. Lawson.

MR. MARTENS: Your Honor, at this time I'd like to pass out the transcripts to the jury that we previously discussed.

THE COURT: Is that No. 11 you're talking about or is that—

MR. MARTENS: We have a stipulation on Government's Exhibit 1 and Government's Exhibit 2, which I'd

* * * *

[28] stipulation as to the admissibility of Government's Exhibit 12. I move to admit Government's Exhibit 12 into evidence.

THE COURT: Any objections? If it's a stipulation, then no objections.

MR. FORRESTER: No objection, Your Honor.

THE COURT: All right. It's admitted.

(Government's Exhibit No. 12 received.)

BY MR. MARTENS

Q Right. Agent Schroepfer, can you see Government's Exhibit 12 on the screen in front of you?

A Yes, sir, I can.

Q Okay. And have you seen this document before?

A Yes, I have.

Q And what is Government's Exhibit 12?

A Government's Exhibit 12 is one of the documents that was surrendered pursuant to the grand jury subpoena, along with the previous exhibit, the actual PPSh-41 parts kit.

Q Do you see at the top of that document where it says "parcel shipping order"? Right at the top of the exhibit. Do you see that?

A Yes, sir.

Q Okay. Do you see underneath that it says "customer"?

A Yes, I can.

Q Can you read for the jury what's written in the box where it says "print name"?

[29] A "Victor A," like alpha, "Rita." R-I-T-A.

Q And do you see—

A There's another mark next to it that I can't make out.

Q Do you also see the box marked "date"?

A Yes, sir.

Q Can you read that date for the jury, please?

A It's dated 9-6-2003.

Q Finally, in the box marked "Package A, sent to," can you read what that box says?

A Box A, marked sent to, it's Interordnance of America, 3305 Westwood Industrial Boulevard, Monroe, North Carolina 28110.

Q Thank you. Sir, one last question. Did you have the opportunity in November of 2003, after Mr. Rita testified in grand jury, to speak with him?

A Yes, sir, I did.

Q And where did that meeting occur?

A. That meeting occurred at the U. S. Attorney's Office here in Charlotte, North Carolina.

Q Who was present for that meeting?

A In addition to myself—

THE COURT: Just a moment. Approach the bench, please.

(Sidebar not reported.)

BY MR. MARTENS

* * * *

[45] Q And what is the length of that call?

A 175 minutes.

Q Two lines up above that, in line 66, do you see another call to that 8280 number?

A Yes, sir, I do.

Q What's the duration of that call?

A 138 minutes.

Q Moving down to line No. 73, do you see a call from number (305) 893-7115?

A Yes, I do.

Q And what number was that call placed to?

A That particular call (355) 360-1557.

Q Do you know (355) 360-1557?

A I don't know. I recognize that number as Special Agent Levin's telephone number.

Q And what was the duration of that call?

A Seven minutes.

Q And that call was at what time?

A 0826.

Q Which is what?

A 8:26 in the morning on 8-4.

Q Directing your attention down to line 78, do you see another call from the 7115 number?

A Yes, sir, I do.

Q And to what number was that call placed?

[46] A That was placed to area code (704) 225-8843.

Q And do you know what (704) 225-8843 is the telephone number for?

A Yes, sir. I recognize that telephone number as belonging to Interordnance of America.

Q And what time did that call to Interordnance occur?

A At 10:05 a.m.

Q Sir, during Mr. Rita's statement to you on November 19th, 2003, was he consistent?

A No, sir.

Q In what ways was he not consistent?

A He was not consistent with explaining why those telephone calls were placed in the manner they were when confronted with his grand jury testimony. We had the transcript, which the jurors now have in front of them, we had that on the table, and we also had the exhibit that was just on the monitor, the call detail records, and we were confronting Mr. Rita about that inconsistency. And he gave various reasons for providing inconsistent statements. However, he did acknowledge that he knew he called Interordnance before turning the kit in, and he knew that that was inaccurate when he provided that to the grand jury.

MR. FORRESTER: Your Honor, I move to strike that answer. Which kit is he referring to?

THE COURT: All right.

* * * *

[56] Q And did you call Mr. Rita or did he call you?

A No. He had to—he called me back.

Q Do you remember when it was that he called you?

A It was a Thursday and I believe it was September 4th of 2003. It was last year.

Q I want to show you on line in front of you what's been admitted as Government's Exhibit 5, and I'll highlight line 73 there. Do you recognize the number (305) 360-1557?

A Yes. That's my cell phone.

Q Is that your work cell phone?

A It's my personal, but it has—I just use that all the time. Plus, it's a Keys number so it would be a local number from the Keys.

Q Directing your attention to the morning of September 4th, 2003, did you receive a telephone call from Mr. Rita?

A Yes, I did.

Q Can you tell the jury about that telephone call.

A Mr. Rita called me and I identified myself by name and that I worked with ATF. I explained to him that the reason why I was contacting him or attempting to contact him was that I needed to recall a gun that he had received from a company in North Carolina called Interordnance, and that it was some type of machine gun parts kit. It was called a PPSh-41.

[57] At that time I asked him if he had this gun and he said yes, he had the gun, and it was in Key West. He also told me he was in Miami at that time.

Q Where were you when this telephone call occurred?

A I was at my house in Miami.

Q How did you know to ask Mr. Rita for the PPSh-41 parts kit?

A Well, I was referring—at that time I had a file, still have it, where I had an invoice that had Mr. Rita's name on it, and that he had ordered a PPSh-41, with a clip or the magazine that goes with it. So I was referring to that document with the time that was ordered on it and shipped.

MR. MARTENS: Your Honor, if I might approach the witness?

THE COURT: Yes, sir.

BY MR. MARTENS

Q I'd like to show you what's been marked as Government's Exhibit 15 and ask you if you recognize this document.

A Yes, I do.

Q What is Government's Exhibit 15?

A This is a copy of an Interordnance invoice where it's billed to Mr. Rita, and it was invoiced on January 9, 2003, for one PPSh-41 Russian parts kit and one PPSh-41, 30-round stick magazine.

[58] Q Is this the invoice you referred to having here?

A Yes. In addition I recognize March 20th, 2003, was the date that we were getting information on doing the recalls.

MR. MARTENS: Your Honor, I move Government's Exhibit 15 into evidence.

THE COURT: Any objection?

MR. FORRESTER: No objection.

THE COURT: Admitted.

(Government's Exhibit No. 15 received.)

BY MR. MARTENS

Q Now, on Government's Exhibit 15, is there a particular type of parts kit referred to on this document?

A Yes. A PPSh-41.

Q Is there any reference on Government's Exhibit 15 to an RPK parts kit?

A No.

Q At any time during your, discussion with Mr. Rita, did you have a discussion about an RPK parts kit?

A No.

Q Did you have any other discussion with Mr. Rita during this telephone call?

A Yes. I generally asked him—I had seen other of these PPSh-41 parts kits, and they were really cut up. And the one that I just had seen a short period of time before I had spoken with him was difficult to put together. So as a

* * * *

[60] that I dealt with were the PPSh-41s. I didn't know anything about the RPK.

Q Had you at that point recovered any of the PPShs from the other three individuals who you had contacted?

A Yes. I had just recovered one—there was one in the Upper Keys, Middle Keys, and the Lower Keys. In the Upper Keys I had just recovered one. In the Middle Keys, it was so bad the individual threw it away. And in the north, I don't remember the disposition, but I had just had a kit before that.

Q What, if any, arrangements were made with Mr. Rita during the telephone call to recover the kit?

A I offered—it was a Thursday, and he indicated that the gun—the kit was in Key West. I offered to drive down and meet him down there and have the kit abandoned to me.

At that time he said he would be going down over the weekend. His son might have the kit. He wasn't sure exactly where it was. So he was going to bring it back to me the following Monday and meet me at the ATF office in Miami.

Q And did that, in fact, occur?

A No.

Q What happened?

A Sometime in the middle of the week I received a call from Mr. Neil Taylor.

[61] Q You said middle, which week are we referring to?

A The following week.

Q After September 4th?

A That's correct.

Q Who is Neil Taylor?

A He was an attorney in the Miami area.

Q And Mr. Taylor contacted you, what happened?

A He informed me that—I believe he said he was a friend of Mr. Rita's, and I was surprised he called. And he said that he was going to be giving me the parts kit that I was asking for.

Q And so did you make arrangements to meet Mr. Taylor to recover the kit?

A Yes, I did.

Q And what were those arrangements?

A The arrangement I would go to his office with the form, the abandonment form, and Mr. Taylor would give me the parts kit and he would sign off on the form for Mr. Rita.

Q Did you set a date to accomplish that surrender of the parts kit?

A Yes, we did, and I believe it was around the 17th of September.

Q Did you, in fact, go to Mr. Taylor's office on the 17th?

A Yes, I did.

[62] Q What happened when you arrived at Mr. Taylor's office on September 17th, 2003?

A Once I went into his office he handed me a small brown—like a cardboard box. And I pulled out the abandonment form to fill it out. And when I opened up the box there was a gun. I didn't know what it was. It wasn't the PPSh-41.

Q How did you know it wasn't the PPSh-41?

A It didn't look like any of the pictures I had, and it didn't look like the PPSh-41 I had just recovered a short time before. I didn't know what it was.

Q When you saw the kit in that box and realized it wasn't a PPSh-41, what happened next?

A I requested that Mr. Taylor call Mr. Rita and ask what this was. I didn't understand why I was getting something different than what I asked for. He refused to. And then he handed me—Mr. Taylor handed me a receipt from a Mailbox-R-Us or some kind of private mailing company out of Key West, Florida.

Q I want to show you what's been previously marked and admitted as Government's Exhibit 12, and ask if you recognize that?

A Yes, I do.

Q What is Government's Exhibit 12?

A This is the receipt that I was handed from the [63] attorney, and it's a parcel shipping order from—it is a Mailbox Etc., from Victor Rita, and it is from the Key West, Mail Boxes-R-Us, and it's addressed to Interordnance. There should be a receipt on the side.

Q Over here on the left-hand side of Government's Exhibit 12, do you recognize that receipt?

A I recognize the receipt. It was with the shipping order. And, again, it's from Mail Boxes Etc., out of the Key West area, and it's dated—it was the 6th. I believe it was September 6th. And I recognized it. It had, in blue ink, a PPSh-41 written on that receipt.

Q Do you know what day of the week September 6th, 2003 was?

A It should be a Saturday.

Q Was that before or after you spoke with Mr. Rita by telephone?

A Two days after I spoke with him.

Q After you received this paperwork from Mr. Taylor, what happened?

A I again asked him to—I asked him—which he couldn't answer, you know, why—where the PPSh one, why it was mailed back to Interordnance. I didn't understand. So to clarify, I wanted to call Mr. Rita from his office and he refused. He did state that he would have talk to—

MR. FORRESTER: Objection, Your Honor.

* * * *

[85] A We met once a month. Usually the last week of the month.

Q And was that every month?

A Yes.

Q And how long did you meet each week?

A It would vary from two days to five days.

Q How much grand jurors were there?

A I believe there was 27, as well as I can remember.

Q What were your obligations as a grand juror, as the foreman, excuse me, of the grand jury?

A I would swear the witnesses in. I would make sure we had a quorum for each session. At the end of the day I would do the returns, the true bills, to the magistrate judge.

Q What's that mean, do the return of the true bills?

A The indictments that we had voted on.

Q During your time as a grand juror here in Charlotte, how many investigations or indictments did you take part in?

A We probably heard close to 400 cases that year.

Q Did you hear witnesses in addition to cases?

A Yes, we did.

Q During the year 2003, were you involved in an investigation of Interordnance?

A Yes, we were. Yes.

Q Can you tell the jury what you remember about the [86] investigation of Interordnance in 2003?

A We were investigating the sales of illegal guns. I believe they were machine guns.

Q And did you hear witnesses concerning that?

A Yes, we did.

Q At some point did a witness—or excuse me, directing your attention to October 27th of 2003, did a Mr. Victor Rita appear before the grand jury?

A Yes.

Q And were you present that day?

A Yes.

Q And do you see Mr. Rita in the courtroom today?

A Yes.

Q Could you describe what he looks like for the jury?

A He's seated at the table to the left, wearing glasses, wearing the dark suit with the red tie.

MR. MARTENS: Your Honor, I'd ask the record reflect that the witness has identified the defendant.

THE COURT: It does.

BY MR. MARTENS

Q When Mr. Rita appeared before the grand jury that day, was he placed under oath?

A Yes, he was.

Q Who placed him under oath?

A I did.

* * * *

[88] A Yes.

Q And what generally, just in a general way, was Mr. Rita questioned about?

A He had purchased two guns from Interordnance.

Q And do you remember generally what he was questioned about with regard to those guns?

A He was asked when he purchased them and if he had returned them to Interordnance.

Q I'd like to show you on the screen in front of you what's already been admitted as Government's Exhibit 2, page 8 of that exhibit, and ask you to take a moment and look at the highlighted testimony.

A Okay.

Q Did you have the opportunity to review this transcript before appearing here as a witness today?

A Yes.

Q And do you recall Mr. Rita being asked the questions reflected on Exhibit 2 and giving the answers in the highlighted area?

A Yes.

Q Did that testimony, as you were there as a grand juror that day, have the potential to influence your decision-making thinking or actions as a grand juror?

A Yes.

Q Can you explain to the jury how that is so?

* * * *

[103] THE COURT: That's how many stipulations there are?

MR. MARTENS: Several pages.

THE WITNESS: Your Honor, may I be released?

THE COURT: Yes, sir, you may go. Thank you, Mr. Marshall.

MR. MARTENS: There's three pages.

THE COURT: All right. Let's get those in.

MR. MARTENS: The parties in the matter of the United States versus Victor A. Rita, Jr., both the defense and the United State hereby stipulate and agree that Interordnance of America advertised Russian EPPSh-41 parts kit for sale. That on or about September 10th, 2003, the defendant, Victor Rita, voluntary delivered an RPK parts kit to his attorney, Neil Taylor, for surrender to ATF. That no letter was sent to Victor Rita by the Bureau of Alcohol, Tobacco, Firearms requesting that he surrender his PPSh parts kit to ATF.

That at the time Mr. Rita was called before the federal grand jury in Charlotte, North Carolina, on or about October 27th, 2003, the federal prosecutor conducting the grand jury investigation was acting under the belief that Mr. Rita had reassembled his PPSh parts kit into a fully functioning condition.

In addition, the prosecutor was aware of a report [104] that Interordnance personnel had, during a telephone call, attempted to discourage David Lawson from cooperating with ATF in its effort to recover the Russian PPSh-41 parts kit that Mr. Lawson had previously purchased from Interordnance.

The parties also agree that Government Exhibit 12 is a true and correct copy of the records of the Saturday, September 6th, 2003, shipment of the PPSh-41 parts kit by Victor Rita to Interordnance of America, via UPS.

The parties further stipulate and agree that if called to testify at trial, the defendant's wife, Isabel Rita, would state

that she has never placed a telephone call to Interordnance of America. And, further, that she did not place a telephone call to Interordnance on or about September 4, 2003.

If called to testify at trial, the defendant's son, Amado Angel Rita, would state that he has never placed a telephone call to Interordnance. And, further, that he did not place a telephone call to Interordnance on or about September 4th, 2003.

And, finally, the telephone number (704) 225-8843 is, in fact, the telephone number for Interordnance of America LP, in Union, North Carolina.

THE COURT: Those stipulations are agreed upon by the parties?

MR. FORRESTER: They are, Your Honor.